



Michigan Psychiatric Society
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Chairman Meadows and Members of the House Judiciary Committee:

Michigan Psychiatric Society, a district branch of the American Psychiatric Association and representing 800 physicians in Michigan who specialize in psychiatry is opposed to HB 5521. This is not a position we arrived at lightly.

HB 5521 would create a felony for criminal sexual conduct for a therapist engaging in exploitative sexual behavior with a patient or client.

Michael Jibson, MD, a psychiatrist and educator from the University of Michigan, and past president of Michigan Psychiatric Society will address the Committee with regard to the issues and implications of this legislation.

American Psychiatric Association members adhere to the ethical code of the medical profession, specifically defined in the *Principles of Medical Ethics* of the American Medical Association and in the American Psychiatric Association's *Principles of Medical Ethics with Annotations Especially Applicable to Psychiatry*, which states unequivocally, "Sexual activity with a current or former patient is unethical."

We know that such activity occurs—we are clear that it is utterly reprehensible—and we know that clients and patients are harmed by these acts.

Nationwide, somewhere between 7% and 15% of psychotherapists engage in sexual contact with their clients/patients, and we know that over 90% of the victims suffer harm.¹

During the 1990's, psychiatrists as a percentage of physicians disciplined for sexual misconduct decreased, and were superseded by family practice physicians.² The reasons for this trend include an increased emphasis on ethics training, frequent articles in the psychiatric literature, and changing practice patterns in psychiatry. These approaches together with the trend to more vigorous enforcement from licensing boards are likely to have significant impact on the problem of sexual misconduct.

The American Psychiatric Association has attempted to address this problem through the education and training of Residents, which includes ethics and medical professionalism, through Continuing Medical Education and through our local and national Ethics Committees as well as by encouraging psychiatrists to participate with states' medical licensing boards, both as members and as consultants.

Sexual exploitation is a breach of ethics and a violation of professional fiduciary duty. The extent to which a single occurrence (arising out of a poorly managed therapeutic relationship by a distressed or

impaired physician) reaches the level of a felony offense is questionable. That the exploitation demands a response is not in question. What should be examined is the effectiveness of the response.

There was a trend peaking in the early 1990's when a number of states adopted criminal provisions for sexual misconduct by various professionals. Some states turned their criminal codes in an effort to go after clergy or unlicensed practitioners who could not be redressed through the state's licensure and discipline systems. Several states, including Michigan in 2000, enacted misdemeanor criminal laws.

The trend to criminal penalties has diminished in recent years and there is evidence that the option of pursuing a criminal case is not being used by victims. Research shows that a relatively small number of victims report sexual misconduct in any venue, for a variety of reasons. However, the civil law system offers the potential of monetary awards for damages, which can be helpful to victims who have spent money for treatment or will continue to have that need.

Furthermore, criminal proceedings require a higher standard of proof, may delay civil or licensure proceedings and may invalidate some malpractice coverage affecting payment of civil damages.

While there is ample evidence that there are a small percentage of professionals whose sexual misconduct is predatory in nature, we contend that physicians committing this level of sexual offense would be covered under Michigan's existing Criminal Sexual Conduct statute

Mental health professionals who may be convicted as felony sex offenders would qualify under the Sex Offenders Registration Act and be listed the Michigan Public Sex Offender Registry website for 25 years and must report in person to a law enforcement agency four times each year for 25 years.

In summary, MPS regards a 15-year felony and listing on the Sex Offender Registry for unprofessional and unethical behavior as a disproportionate response. The treatment of mental health patients as incapable of giving consent is stigmatizing and inappropriate. We fail to see a solid basis for singling out mental health professionals and not other professionals with fiduciary relationships. While some actors are no doubt predatory, we believe existing statutes are broad enough to cover clearly criminal acts. We also think the civil process is likely preferable, from the victim's point of view, in that there is the potential for monetary damage award.

We urge this Committee to take the time to fully evaluate the implications of this proposal and consider alternatives that may more effectively address this problem.

¹ Strasburger, LH, Jorgenson, L, Randles, R: Criminalization of Psychotherapist-Patient Sex. *Am J Psychiatry* 1991 148: 859-863

² Christine E. Dehlendorf; Sidney M. Wolfe: Physicians Disciplined for Sex-Related Offenses. *JAMA*. 1998;279(23):1883-1888.